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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JUNE 28, 2001

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUE000662

Ex Parte: In the matter of  
adopting rules governing the  
manner of installing underground  
utility lines

ORDER ADOPTING RULES

This Order promulgates rules for the enforcement of § 56-257 of the Code of Virginia. The 2000 General Assembly amended § 56-257 of the Code of Virginia effective July 1, 2001, to provide that an "operator",<sup>1</sup> as defined in § 56-265.15, having the right to install underground utility lines, as defined in § 56-265.15, "except interstate gas pipelines subject to regulation by the U.S. Department of Transportation, shall install such underground lines in accordance with accepted industry standards". See 2000 Va. Acts ch. 779. Section 56-257 of the Code of Virginia, as amended, defines "accepted industry standards" to include, as applicable, standards established by the National Electric Safety Code, the Commission's pipeline safety regulations, the Department of Health's waterworks regulations (12 VAC 5-590-10 et seq.), and the Utility Industry

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<sup>1</sup> Section 56-265.15 of the Code of Virginia defines "operator" to mean "any person who owns, furnishes or transports materials or services by means of a utility line."

Coalition of Virginia. It also directs the State Corporation Commission ("Commission") to promulgate any rules or regulations necessary to enforce the provisions of the statute as to those operators that do not comply with accepted industry standards when installing underground utility lines.<sup>2</sup>

Section 56-257 of the Code of Virginia, as amended, expressly prohibits the Commission from ordering action by, or imposing penalties on, any county, city, or town. Instead, it requires the Commission to inform counties, cities, and towns of alleged violations of accepted industry standards or regulations adopted under the statute, and provides that, at the request of the locality, the Commission may suggest corrective action.

In an effort to identify issues relative to the enforcement of § 56-257, Staff met with a number of stakeholders on September 20, 2000. Based on the issues raised during that meeting as well as the need for enforcement procedures, the Staff developed proposed "Rules for the Enforcement of § 56-257 of the Code of Virginia" ("Rules").

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<sup>2</sup> "Utility line" for purposes of § 56-257 of the Code of Virginia has the same meaning as in § 56-265.15, i.e.,

any item of public or private property which is buried or placed below ground or submerged for use in connection with the storage or conveyance of water, sewage, telecommunications, electric energy, cable television, oil, petroleum products, gas, or other substances, and includes but is not limited to pipes, sewers, combination storm/sanitary sewer systems, conduits, cables, valves, lines, wires, manholes, attachments, and those portions of poles below ground. . . .

On November 30, 2000, the Commission entered an Order that:

- (i) docketed the proceeding, (ii) directed the Division of Information Resources to publish notice of the Staff's proposed Rules on two occasions in newspapers of general circulation throughout the Commonwealth, (iii) invited interested parties to comment or request a hearing on the proposed Rules set out as Attachment 1 to the November 30 Order, (iv) required that the Order, together with the proposed Rules be forwarded for publication in the Virginia Register of Regulations, and
- (v) directed the Division of Information Resources to file with the Clerk of the Commission the proof of the publication required by the Order.

On January 25, 2001, the Division of Information Resources filed its proof of the publication of notice required by the November 30, 2000, Order Prescribing Notice and Inviting Comments.

In response to the November 30, 2000, Order, A&N Electric Cooperative, BARC Electric Cooperative, Central Virginia Electric Cooperative, Community Electric Cooperative, Craig-Botetourt Electric Cooperative, Mecklenburg Electric Cooperative, Northern Neck Electric Cooperative, Inc., Northern Virginia Electric Cooperative, Powell Valley Electric Cooperative, Prince George Electric Cooperative, Rappahannock Electric Cooperative, Shenandoah Valley Electric Cooperative, Southside Electric Cooperative, Inc., and the Virginia

Maryland & Delaware Association of Electric Cooperatives ("the Cooperatives") jointly filed comments. Arlington County ("Arlington"); Cox Virginia Telecom, Inc. ("Cox"); Virginia Telecommunications Industry Association ("VTIA"); Appalachian Power Company ("AEP-VA"); Delmarva Power & Light Company ("Delmarva"); Fairfax County Water Authority ("Fairfax County"); and Roanoke Gas Company ("Roanoke") also filed comments. Columbia Gas of Virginia, Inc. ("Columbia"); Washington Gas Light Company ("WGL"); and Virginia Natural Gas, Inc. ("VNG") (hereafter collectively referred to as "the gas Companies") jointly filed comments. None of the parties filing comments requested a hearing on the Rules, although several requested leave to participate in a hearing if one was convened.

On February 23, 2001, the Commission entered an Order that directed its Staff to file a report on these comments on or before April 20, 2001. The Order also invited interested parties of record to file on or before May 10, 2001, further comments in reply to, together with any request for hearing on, any recommendations or further revisions to the Rules set out in the Staff's report.

On April 19, 2001, the Commission granted the Staff's request to extend the due date for filing the Staff's report to May 3, 2001, and authorized interested parties of record to file further comments in response to the report or to request a hearing on the same by May 17, 2001.

On May 3, 2001, the Staff filed its report in this matter. In its report, the Staff summarized and analyzed the comments filed in this matter, and proposed further revisions to the Rules.

On May 17, 2001, the Cooperatives, AEP-VA, the gas Companies, and Cox each filed further comments in response to the Staff's report. None of these parties requested a hearing on the Staff's report, although several of those commenting requested leave to participate if the Commission determined to convene a hearing.

The Virginia Cable Telecommunications Association ("Cable Association" or "VCTA") filed a "Motion to Accept Comments in Response to the Staff Report", together with its comments. In support of its Motion, the Cable Association noted that while it did not file initial comments in response to the November 30, 2000, Order, it was interested in the proposed Rules, had reviewed the Staff report, and generally supported the report's recommendations. The VCTA alleged that no other party was likely to be prejudiced by its comments and contended that receiving its comments would not cause the Commission to delay the consideration of the proposed Rules or to implement those Rules by July 1, 2001. The Cable Association did not request a hearing, but asked that if a hearing was scheduled, it be permitted to participate in the hearing.

NOW, upon consideration of the initial comments filed herein, the Motion filed by the Cable Association, the Staff report, and the comments filed in response to that report, the Commission is of the opinion and finds that the Cable Association's motion should be granted and that its comments should be accepted for filing in this proceeding. In addition, we find that no request for hearing was made, and therefore no ore tenus hearing should be convened in this matter. Further, we find that the attached Rules for the enforcement of § 56-257 of the Code of Virginia should be adopted, effective July 1, 2001. A complete set of these Rules is appended to this Order as Attachment A.

In adopting these Rules, we have carefully considered the pleadings and comments of the participants in this proceeding. The substance of these comments has been vital in crafting the Rules hereby promulgated in this Order. While we will not review each Rule in detail, we will comment briefly on several of the Rules that received extensive comment.<sup>3</sup> The reference to the rule numbers set out in the discussion below refers to the rule numbers as they appear in Appendix 2 to the May 3, 2001, Staff report. Finally, minor revisions to the Rules have also

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<sup>3</sup> For ease of reference, the designation "20 VAC 5-325" will be dropped. The reader should assume this is the title and chapter for all the rules discussed in this Order unless specifically stated otherwise. For example, when the Order refers to "Rule 30", it should be understood that this refers to 20 VAC 5-325-30.

been made to prepare them for publication in the Virginia Register of Regulations.

#### Rule 30 - Installation of Utility Lines

Rule 30 requires that all operators, except interstate gas pipelines subject to regulation by the United States Department of Transportation, install their underground utility lines in accordance with the applicable standards set forth in § 56-257 of the Code of Virginia in effect at the time of installation. This Rule also provides that if there is a conflict among any of the standards, the most stringent standard shall be applied, unless the conflict can otherwise be resolved without violating an applicable law or a regulation. Rule 30 concludes by providing that the rule's reference to the standards set out in § 56-257 does not change or extend the standard's application, but will make the standards subject to enforcement as set forth in Part III of Chapter 325 of the Rules.

Cox comments that proposed Rule 30 is susceptible to multiple interpretations. It contends that the Rule, as presently drafted, could be interpreted to mean that telecommunications companies might be expected to adhere to the Department of Health's waterworks regulations. The Cable Association supports Cox's comments, observing that in its view, the Rules would gain clarity by specifying that the standards to be applied are those that pertain to the type of utility performing the installation.

As Staff noted in its May 3, 2001, report, the industry standards referenced in § 56-257 of the Code of Virginia, as amended, already specify the purpose and scope of the standards. Further, as amended, § 56-257 B of the Code of Virginia directs the Commission to enforce the directives found in § 56-257 A "as to those operators that do not comply with such accepted industry standards."<sup>4</sup> It does not authorize the Commission to create new standards or to amend existing ones.

The gas Companies comment that the most stringent standard language in Rule 30 may be inconsistent with the legislative intent for § 56-257, and that this portion of the Rule would render meaningless the standards adopted by the Utility Industry Coalition of Virginia ("UIC"). Among other things, they contend that the Staff proposal fails to offer guidance on the standard to be applied when industry standards appear to conflict. They observe that the unintended effect of applying the most stringent standard may be to exacerbate the challenges faced by

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<sup>4</sup> Section 56-257 A of the Code of Virginia, as amended, provides that

[e]very operator, as defined in § 56-265.15, having the right to install underground utility lines, as defined in § 56-265.15, except interstate gas pipelines subject to regulation by the U.S. Department of Transportation, shall install such underground utility lines in accordance with accepted industry standards. Such standards shall include, as applicable, standards established by the National Electric Safety Code, the Commission's pipeline safety regulations, the Department of Health's waterworks regulations (12 VAC 5-590-10 et seq.), and standards established by the Utility Industry Coalition of Virginia.



operators in areas of the state with many underground utility lines and structures.

On occasion, the standards referenced in § 56-257 of the Code of Virginia may conflict. In our view, Rule 30 appropriately provides guidance to operators by positing "the most stringent" standard, e.g., in the case of separation standards, the standard providing the greatest level of separation between underground utility lines, as an acceptable means by which an operator may resolve conflicts between standards.

The language in Rule 30 further provides that the most stringent standard shall be applied "unless the conflict can otherwise be resolved without violating applicable law or regulation". AEP-VA proposed this language at page 4 of its January 22, 2001, Comments. As AEP-VA notes

. . . while there may be certain situations where conflicts between different standards simply cannot be resolved, except by applying the more stringent standard, this will not always necessarily be the case. The standards that are being adopted include a certain degree of flexibility, and the particular facts presented in a situation may present opportunities for complying with all applicable requirements without always having to apply the most stringent standard. To the extent that different standards applicable to different industries need to be reconciled, the goal of these rules should be to resolve the conflict and to move toward a consensus position, rather than simply to provide a mechanism to determine which standard will control. To the extent that there is an opportunity afforded by the standards, as they are

applicable separately, to resolve conflicts without violating any applicable law or regulation, the revision suggested by AEP-VA will preserve that opportunity.

January 22, 2001, AEP-VA Comments at 4-5.

We agree with AEP-VA. In our view, Rule 30 preserves the opportunity to apply the standards adopted by the UIC through the language "unless the conflict can otherwise be resolved without violating applicable law or regulation." This language provides guidance and flexibility to operators of underground utility lines.

The Cooperatives propose to revise the phrase "unless the conflict can otherwise be resolved without violating applicable law or regulation" by adding "by the operators involved" to the Rule. We do not disagree and will accept the Cooperatives' recommendation as to this revision of the Rule.

Rule 40 - Operator's Responsibilities to  
Maintain Accurate Records

The Cable Association agrees with Staff that the phrase ". . . for use in connection with . . ." in Rule 40 means utility lines in active service. May 17, 2001, VCTA Comments at 2. However, it fears that in the future the Commission or appellate courts could interpret the reference in § 56-265.15 to each underground utility line installed after July 1, 2001, differently so as to apply the rule to abandoned lines still capable of being used in connection with the storage or conveyance of utility services in the sense that an abandoned

hammer remains capable of use in driving nails. The Cable Association urges us to add the word "active" to modify the phrase "underground utility line" in the first sentence of Rule 40. Cox proposes a similar revision to Rule 40.

Rule 40 applies to installations of utility lines made after July 1, 2001. If a line is available for use, and can in fact be used, then the operator must maintain a reasonably accurate record of that installation. If, on the other hand, an operator abandons a utility line so that the line may no longer be used "in connection with the storage or conveyance" of utility service as contemplated by the definition of § 56-265.15 of the Code of Virginia, no record need be maintained by the operator for that line. We decline to refine further the definition of "utility line" and find that the plain meaning of the words used in § 56-257, and, in turn, § 56-265.15, to define "utility line" provides sufficient guidance to operators.

The VCTA comments that it is unclear whether the accuracy of records required in the first sentence of Rule 40 is also required for notations prescribed in the second sentence of that Rule. It opines that a lesser degree of accuracy on installation records is needed when noting the location of a preexisting underground utility line and the action taken by the operator installing the underground utility line to protect against damage from such preexisting underground utility lines.

With regard to VCTA's concerns about the accuracy required by Rule 40 for operator records, the Rule plainly states that these records must be "reasonably accurate". If in the course of installing a line, an operator discovers another line in proximity to the one being installed, Rule 40 requires the installing operator to note the location of the pre-existing line relative to the line being installed, and the action taken by the installing operator to protect against damage from the preexisting underground utility line. Reasonableness is the lodestar of Rule 40. Whether a particular action is reasonable will be dependent on the factual context of each case. Additionally, the documentation of installation data is necessary in order to determine the relevant industry standards that should be applied to installations made after July 1, 2001, and that the installation was made in accordance with such standards.

Cox comments that Rule 40 is inefficient and requires a duplication of efforts when excavations occur. Cox opines that an operator must inform the notification center where an excavation will be occurring and is required to keep a record of the excavation. Cox asserts that under Rule 40, both the operator and notification center will be required to keep a record of the excavation, thus creating a duplication of the records maintained. Cox also objects to the second sentence of Rule 40, commenting that the Rule would require Cox to add

fields to its current software to track installation dates of particular lines.

Rule 40 does not address excavation records, as Cox asserts. It only requires an operator to prepare and maintain reasonably accurate installation records as to underground utility lines installed after July 1, 2001. Cox apparently agrees that it is meritorious to maintain reasonably accurate installation records but proposes to do so only for "active" underground utility lines installed after July 1, 2001.

The Cooperatives comment that while the standards should only require an operator to ensure that a minimum separation distance, or appropriate protective measure such as a shield, is present at the time of installation, the Rule as proposed by Staff would require the operator to expose the other utility line to ascertain that line's exact location. The Cooperatives propose to strike "the location of such preexisting underground utility line" from the second sentence of Rule 40.

In order to make a reasoned decision relative to whether an appropriate protective measure is necessary, the Cooperatives and other operators must ascertain whether a minimum separation distance can be maintained between the underground line being installed and any pre-existing one. Information on the location of a line that is already underground is important to the operator's decision-making process as the operator contemplates a new underground installation. Consequently, we decline to

delete "the location of such pre-existing underground utility line" from the second sentence of Rule 40.

In contrast to Cox, the Cable Association, and the Cooperatives, the Gas Companies appear to support Rule 40 as it appears in Appendix 2 to the Staff report. May 17, 2001, Gas Companies' Comments at 6-7.

Finally, multi-dimensional maps and drawings are not required by this Rule as VTIA's January 22, 2001 comments appear to suggest. Instead, the distance separating the pre-existing underground line and the installed line and any action taken to protect the line if appropriate separation cannot be achieved may simply be noted on the relevant records maintained by the operator. We will adopt Rule 40 as proposed in Appendix 2 of the Staff report.

#### Rule 90 - Civil Penalties

The Cable Association disagrees with the Staff's recommendation in its report to retain the civil penalties permitted by § 12.1-13 of the Code of Virginia. They comment that the failure to comply with industry standards designed to mitigate the potential damage to underground utility lines is no more serious a violation than a violation that actually damages the underground facilities, and therefore lower penalties than those identified in § 12.1-13 should be the rule. May 17, 2001, Comments of the Cable Association at 3.

Section 56-257 of the Code of Virginia, as amended, does not specify the fines to be imposed for a violation of the Commission's Rules to enforce that statute. Section 12.1-13 of the Code of Virginia addresses the fines to be imposed upon an individual or business conducted by any entity other than an individual for failure to comply with any valid rule, regulation, or Commission order where no fine or other penalty is imposed by statute. It provides that the amount of the fine that may be imposed on an individual may not exceed \$5,000, and the amount of a fine that may be imposed in the case of a business conducted by an entity other than an individual may not exceed \$10,000.

Neither Virginia statutes nor Rule 90 require us to impose the maximum penalty in every instance. However, there may be instances that include, but are not limited to, circumstances in which an individual or business entity has repeatedly violated § 56-257 of the Code of Virginia or where a violation of the statute and the Commission's regulations is particularly egregious. Since the legislature has not prescribed any other fines for violations of § 56-257, we presume that it intended that the fines provided for in § 12.1-13 apply to violations of § 56-257. A defendant cited for a probable violation of the Rules may offer evidence and argument on why penalties that are less than the maximum penalties permitted by § 12.1-13 of the Code of Virginia are appropriate.

We appreciate the insightful contribution of the participants to this rulemaking. As a result of the Staff's and other participants' efforts, we believe that the rules adopted herein, in combination with the provisions of § 56-257 of the Code of Virginia, will serve to protect the public and provide meaningful guidance to operators installing underground utility lines. We therefore adopt the "Rules for the Enforcement of § 56-257 of the Code of Virginia," appearing as Attachment A hereto, effective July 1, 2001.

Accordingly, IT IS ORDERED THAT:

(1) The Rules for Enforcement of § 56-257 of the Code of Virginia, appended hereto as Attachment A, are hereby adopted, effective July 1, 2001.

(2) A copy of this Order and the Rules adopted herein shall be promptly forwarded to the Virginia Register of Regulations for publication.

(3) There being nothing further to be done in this matter, this case shall be dismissed from the Commission's docket of active proceedings, and the papers filed herein shall be placed in the Commission's files for ended causes.



**CHAPTER 325.**

**RULES FOR ENFORCEMENT OF  
§ 56-257 OF THE CODE OF VIRGINIA.**

**PART I.**

**GENERAL PROVISIONS.**

**20 VAC 5-325-10. Scope.**

This chapter is hereby adopted, effective July 1, 2001, by the State Corporation Commission ("Commission") to enforce the provisions of § 56-257 of Title 56 of the Code of Virginia relative to the manner of installing underground utility lines as defined by § 56-265.15 of the Code of Virginia.

**20 VAC 5-325-20. Definitions.**

The following words and terms when used in this chapter shall have the following meaning, unless the context clearly indicates otherwise:

"Division" means the State Corporation Commission's Division of Energy Regulation.

"Installation records" means maps, drawings, diagrams, sketches, or any other depictions or descriptions of an underground utility line ~~that may be used to demonstrate compliance with the applicable standards as set out in 20 VAC 5-325-30 and 20 VAC 5-325-40.~~

**PART II.**  
**STANDARDS.**

**[20 VAC 5-325-30. Standards incorporated by reference.**

The following standards are incorporated by reference within these rules and shall be considered part of the requirements of these rules:

1. The National Electric Safety Code (C2 1997), dated August 1, 1996;
2. 49 C.F.R. Parts 192 and 195;
3. The Virginia Department of Health's Waterworks Regulations (12 VAC 5-590-10 et seq.); and
4. Voluntary Underground Utility Facility Separation Standards, effective January 1, 2000, established by the Utility Industry Coalition of Virginia.]

**[20 VAC 5-325-40 20 VAC 5-325-30]. Installation of utility lines.**

All operators, as defined in § 56-265.15 of the Code of Virginia, having the right to install underground utility lines, as defined in § 56-265.15 of the Code of Virginia, except interstate gas pipelines subject to regulation by the United States Department of Transportation, shall install such underground utility lines in accordance with the applicable standards [as set forth in §56-257 of the Code of Virginia] in effect at the time of installation of such underground utility lines. [These standards include, as applicable, the standards incorporated by reference in

~~20 VAC 5-325-30.~~ ] If there is a conflict among any of the standards ~~[incorporated by~~  
~~reference in 20 VAC 5-325-30]~~ , the most stringent standard shall be applied [, unless the  
conflict can otherwise be resolved by the operators involved without violating applicable law or  
regulation. Reference to standards set out in §56-257 of the Code of Virginia shall not change  
or extend their application, but shall make them subject to enforcement by the Commission as  
set forth in Part III of this chapter.]

**~~[20 VAC 5-325-50 20 VAC 5-325-40].~~ Operator's responsibilities to maintain accurate**  
**records.**

~~[In order to demonstrate compliance with § 56-257 of the Code of Virginia, the The]~~  
operator shall prepare and maintain reasonably accurate installation records of each  
underground utility line installed after July 1, 2001. [Whenever it is determined that an  
underground utility line is to be installed with less separation from a pre-existing underground  
utility line than required under the most stringent standard, the location of such pre-existing  
underground utility line and the action taken by the operator installing the underground utility line  
to protect against damage from such pre-existing underground utility line shall be noted on the  
installation records.]

**~~[ 20 VAC 5-325-60 20 VAC 5-325-50].~~ Emergency installations.**

Temporary repairs of underground utility lines performed to mitigate an emergency as defined in § 56-265.15 of the Code of Virginia are not required to comply with the provisions of these rules. Permanent repairs made after the emergency, as defined in § 56-265.15 of the Code of Virginia, ceases to exist must comply with this chapter [to the extent possible without requiring the installation of new facilities and without requiring excavation or investigation beyond that necessitated by the repair].

### **PART III.**

#### **ENFORCEMENT.**

##### **[ ~~20 VAC 5-325-70~~ 20 VAC 5-325-60]. Report of probable violations.**

Any person, as defined in § 56-265.15 of the Code of Virginia, may report probable violations of § 56-257 of the Code of Virginia to the division. Reports of probable violations may be submitted to the division in writing, by telephone, fax, e-mail, or in person.

##### **[ ~~20 VAC 5-325-80~~ 20 VAC 5-325-70]. Division investigation of probable violations.**

[A.] Upon receipt of a report of a probable violation, the division shall conduct an investigation to examine all the relevant facts regarding the reported probable violation. The investigation may include, among other things, records verification, informal meetings, teleconferences, and photo-documentation. Upon completion of the investigation and finding evidence of a probable violation of § 56-257 of the Code of Virginia and these rules, the division shall take one or more of the following actions:

1. Issue a warning letter to the person alleged to have committed the violation ("respondent");
2. Issue an information letter to a county, city, or town alleged to have committed the violation, advising of the discovery of an alleged violation;
3. Enter settlement negotiations with the respondent. Upon reaching agreement on settlement terms, the division shall present the proposed settlement to the Commission for final acceptance or rejection; or
4. Request the issuance of a "Rule to Show Cause" order pursuant to the Commission's Rules of Practice and Procedure (~~5 VAC 5-10-10~~, ~~5 VAC 5-20-10~~ et seq.).

[B. Upon completion of the investigation and finding no evidence of a violation of Section 56-257 of the Code of Virginia and this chapter, the division shall so advise the respondent by letter.]

**[~~20 VAC 5-325-90~~ 20 VAC 5-325-80]. Commission action.**

A. The Commission may accept or reject a proposed settlement to resolve probable violations. If the Commission rejects a proposed settlement but finds a probable violation may have occurred, a public hearing will be scheduled to receive evidence and take appropriate enforcement action as provided by the Commission's Rules of Practice and Procedure (~~5 VAC 5-10-10~~ 5 VAC 5-20-10] et seq.).

B. If the Commission finds, after a hearing, that a violation has occurred or is continuing, it may issue a remedial order or injunction. The remedial order or injunction may direct the party or parties, other than cities, counties, or towns, to take any action, including the payment of a civil penalty as provided by § 12.1-13 of the Code of Virginia. A remedial order issued by the Commission under this section shall be effective upon issuance, in accordance with its terms, unless stayed, suspended, modified or rescinded.

C. If, upon investigation, the Commission finds reasonable grounds to conclude that a violation has occurred or is continuing, and presents an immediate potential danger to life, health, property or essential public service, the Commission may issue a temporary injunction and schedule a hearing and require the probable violator, other than cities, counties, or towns, to show cause why it should not be permanently enjoined on account of the alleged violation or violations.

**[ ~~20 VAC 5-325-100~~ 20 VAC 5-325-90. Civil penalties. ]**

A. The amount of the civil penalty for a violation of these rules shall be determined in accordance with § 12.1-13 of the Code of Virginia.

B. In determining the amount of any civil penalty included in a settlement, the nature, circumstances, and gravity of the violation, the degree of the probable violator's culpability, the probable violator's history of prior offenses, and such other factors as may be appropriate shall be considered.

C. The probable violator shall pay a civil penalty that has been imposed by the Commission as a result of a rule to show cause or pursuant to an order of settlement by submitting to the division a certified check made payable to the Treasurer of Virginia in the correct amount of the civil penalty determined by the Commission.

D. If the probable violator or named defendant in an order issued pursuant to these rules ~~[promulgated hereunder]~~ fails to comply with such order, then the amount of the civil penalty for failure to comply with the Commission's order shall be determined in accordance with § 12.1-33 of the Code of Virginia.

**[ ~~20 VAC 5-325-110~~ 20 VAC 5-325-100]. Petition for reconsideration.**

Any person subject to an order from the Virginia State Corporation Commission may petition the Commission for reconsideration of its order under the Commission's Rules of Practice and Procedure (~~[5 VAC 5-10-10, 5 VAC 5-20-10]~~ et seq.).

**[ ~~20 VAC 5-325-120~~ 20 VAC 5-325-110]. Appeals generally.**

Any final finding, decision setting the substantive law, order or judgment of the Commission may be appealed only to the Supreme Court of Virginia, subject to § 12.1-39 et seq. of the Code of Virginia, the Commission's Rules of Practice and Procedure (~~5 VAC 5-10-10~~ ~~5 VAC 5-20-10]~~ et seq.), and Rule 5:21 of the Supreme Court.